

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRANK LOUIS MILES AND JOYCE
MILES,

Plaintiffs,

v.

ELDON VAIL *et. al.*,

Defendants.

Case No. C06-5319 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
PLAINTIFFS' CLAIMS

This civil rights action comes before the Court on the Report and Recommendation of the Magistrate Judge that Defendants' cross motion for summary judgment be granted and Plaintiff's action be dismissed, with prejudice. Plaintiff has filed an untimely response to the cross motion for summary judgment which the Court will consider as an objection to the Report and Recommendation.

As detailed by the Magistrate Judge, Plaintiff Miles is no longer incarcerated and, thus lacks standing to seek injunctive relief. Defendant Spaulding did not participate in the decision to deny extended family visits and thus, cannot be held liable. Finally, the Plaintiffs provided no admissible evidentiary support for their equal protection claim.


Plaintiffs' responsive pleading attempts to create a material issue of fact to support an equal protection claim. The submission does not provide such evidence. The "evidence" submitted by

1 Plaintiffs indicating institutional approvals of extended family visits to other inmates with domestic
2 violence convictions does not demonstrate similarly situated inmates were treated differently than
3 Plaintiff. Here, Plaintiff was denied extended family visitation with the purported victim of the
4 domestic violence. The evidence submitted by Plaintiffs concerns inmate visitations with family
5 members that were not the victims of the domestic violence. Thus, Plaintiff has failed to present a
6 prima facie case that similarly situated inmates were treated differently.

7 The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley
8 Arnold, the Plaintiffs' response, and the remaining record, does hereby find and ORDER:

- 9 (1) The Court adopts the Report and Recommendation;
- 10 (2) Defendant's Motion For Summary Judgment [Dkt #18] is **GRANTED**. This action is
11 **DISMISSED WITH PREJUDICE**.
- 12 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants,
and to the Hon. J. Kelley Arnold.

13 DATED this 4th day of September, 2007.

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18 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE
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